



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Petty Officer Ricky Johnson, USN - Waiver Request

File: B-256417

Date: July 22, 1994

DIGEST

Navy member expected his pay to decrease when he moved into government quarters. When it did not decrease, he says that he brought the matter to the attention of disbursing clerks who assured him that his pay was correct. The member, however, was erroneously paid a Basic Allowance for Quarters and Variable Housing Allowance for almost 4 years. Because there is nothing in the record to corroborate the member's version of events, and (1) the member's leave and earnings statements clearly showed that he was being overpaid and why, but (2) he did not pursue the overpayments with senior disbursing officials until the payments were terminated, he is not without fault. The debt therefore may not be waived.

DECISION

This is in response to an appeal of a Claims Group settlement denying Petty Officer Ricky Johnson's request for waiver of a debt that arose when he erroneously was paid Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA) while he lived in government quarters with his family in Hawaii. While living in government quarters, he was not entitled to either allowance.

We affirm the settlement.

Petty Officer Johnson says that he notified his disbursing office that he intended to move into government quarters shortly before doing so, and was advised that his pay would be adjusted upon confirming notice from the housing office. Another disbursing clerk later advised Petty Officer Johnson that the letter had been received, and that his pay was being adjusted to reflect the move. Petty Officer Johnson moved into government housing on August 26, 1988. However, through administrative error Petty Officer Johnson continued to receive BAQ and VHA until April 15, 1992, resulting in a net debt of \$27,076.

Petty Officer Johnson states that when a month passed without any change in his pay, he re-visited the disbursing office and was told by a disbursing clerk that his pay did not decrease because he was receiving partial BAQ and sea pay. Petty Officer Johnson says that when he subsequently was assigned to another ship he checked with that ship's disbursing office, where his records were reviewed and he was assured his pay was correct.

The Navy denied Petty Officer Johnson's waiver request on the basis that his leave and earnings statements clearly showed that he was continuing to receive BAQ with dependents and VHA, so that he should have pursued the matter with senior disbursing officials rather than rely on the disbursing officials to whom he says he spoke.

Petty Officer Johnson concedes that he did not review his leave and earnings statements for accuracy, basically because he found them confusing, but points out that he questioned his pay three times with the responsible officials at his duty stations, all of whom were senior to him. Petty Officer Johnson maintains that at his grade and career stage he was entitled to rely on their assurances. Petty Officer Johnson has furnished a statement from his direct supervisor at the time that he was aware of Petty Officer Johnson's concerns about his pay, and confirming that the member "expressed his concerns and raised questions directly to the Disbursing Offices. . . ."

Under 10 U.S.C. § 2774, the Comptroller General may waive a claim against a member of the uniformed services arising out of an erroneous payment of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States. The claim may not be waived, however, if there is any indication of fraud, misrepresentation, fault, or lack of good faith on the member's part.

We consider fault to exist if in light of all the facts the member should have known there was an error and taken steps to have it corrected. Our standard is whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. Petty Officer Ronald H. Frayo, USN, B-192380, Nov. 8, 1978.

It is not clear from the record exactly what Petty Officer Johnson asked and was told each time he inquired. For example, his supervisor's statement only confirms that, to the supervisor's knowledge, the member did talk to disbursing office personnel. Moreover, there are no statements from any of the disbursing clerks to whom the member says he directed his questions, nor does Petty

Officer Johnson identify them for purposes of further inquiry.

Further, the one substantive explanation Petty Officer Johnson says he received was that his pay had not changed because it now included partial BAQ and sea pay. However, Petty Officer Johnson's leave and earnings statements clearly show that the amount did not change because he was continuing to be paid BAQ with dependents, not partial BAQ, and VHA. We have held that a person is at least partially at fault for failure to examine leave and earnings statements that would have alerted him to the fact that he was being overpaid. Frayo, supra. While Petty Officer Johnson may have found his leave and earnings statements confusing or otherwise troublesome, had he reviewed them he would have been aware not only that he was being paid in excess of his entitlements, but why. Petty Officer Johnson thus then would have known that the disbursing clerks to whom he talked, including the one that offered the partial BAQ/sea pay explanation, were wrong in their assurances, and should have pursued a full explanation and termination of the overpayments. Petty Officer Christopher C. Robbins, USN, B-194233, Sept. 12, 1979.

Since Petty Officer Johnson did not review his leave and earnings statements and pursue the matter further, he is not without fault, and his debt may not be waived. See Frayo, supra. Accordingly, we affirm the Claims Group's denial of his waiver request.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

We note that while Petty Officer Johnson may have been inclined to defer to the disbursing clerks, his direct supervisor notes in his statement that at least four members of the department, including himself, experienced overpayment problems with the same disbursing office at Petty Officer Johnson's first assignment, at the same time. This suggests that at least the supervisor should have known that a member's deference to an assurance at odds with the member's understanding of what his pay situation should have been, in lieu of pursuit at a higher level, would be ill-advised.